CONFERENCE OF THE COMMITTEE ON DISARMAMENT

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Comments on draft convention on the "Prohibition of Military or any other use of environmental modificiation techniques" (CCD/471, CCD/472) made in a statement by Mrs. Inga Thorsson in the First Committee of the United Nations General Assembly, 14 November, 1975

The problem of environmental warfare has attracted much attention during the past years. Already the present state of technology admits the use of environmental modification techniques. The gradual development of technology in this field will perhaps in the future make application feasible to activities which today we would view as science fiction. Several examples of possible peaceful uses of this technique can be quoted. It is however, also beyond doubt that the technique can be used in such a way as to cause immense harm to mankind. Peaceful uses may involve incidental harmful effects, and even more, the technique may as well be used for clear hostile purposes. This latter case is dealt with in the draft convention presented by the United States and USSR almost three months ago.

Even peaceful measures involved in this context are often of such magnitude that the effects extend beyond the territory of one State. Spillover effects into other States or international areas are very likely to occur. It is important that international legal principles and guidelines be developed simultaneously or - even better - one step ahead of the scientific progress in this field. In the declaration adopted by the United Nations Conference on the Human Environment, held in Stockholm in 1972, it was stated that "in the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself". Some basic legal norms, but not very articulate and explicit, do exist in this field and the United Nations Environment Programme (UNEP) does deal with environmental modification problems. Nevertheless it seems urgent to achieve, as soon as possible, internationally accepted legal instruments relating to the peaceful uses of environmental modification techniques.

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Mr. Chairman, let me now turn to the hostile uses. This problem was, as mentioned earlier, discussed in quite some detail at the last session of the CCD. It was obvious that scientific and technical advances may open new possibilities with respect to hostile modification of the environment. I will not go into detail of the various methods analysed, suffice it to mention that the discussion in the CCD covered such methods as the disperrion and generation of fog and clouds, the generation and direction of storms, the making of rain and snow, disruption of the ionosphere, modification of the ozone layers, stimulation of large tidal waves, of earthquakes and of volcano eruptions. A survey of the literature would of course give many more examples. I should add that there is no consensus on the significance of these methods.

Before I comment on the various aspects of the draft convention it is appropriate to call the attention of this committee to the fact that the Diplomatic Conference on International Law in Armed Conflicts at its second session in Geneva this year dealt with this problem. In a first reading, the third committee of that conference, adopted two articles relating to environmental warfare, which read as follows:

> "It is forbidden to employ methods and means of warfare which are intended to or may be expected to cause widespread, long-term and severe damage to the natural environment".

The paragraph that I have just read falls into the context of methods and means of combat.

In the context of the protection of the civilian population against the effects of hostilities the following article was adopted:

> "(1) Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. Such care includes a prohibition on the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
>
> (2) Attacks against the natural environment by way of reprisal are prohibited".

Thus, when these articles are finally adopted, every method or means of warfare which would seriously damage the natural environment will be prohibited - including of course the particular type on environmental modification techniques we are now dealing with. It is interesting to note, that not only those measures which are intentionally directed against the natural environment are prohibited, but also such measures that may be expected to cause, even as an incidental effect, severe damage to the environment. Environmental modification techniques, as weapons in international wars, will thus be prohibited.

What I have just said does not, of course, make the draft convention superfluous. The scope of the convention is broader. It covers all hostile use even in peacetime. But it will of course be an important task to harmonize the international efforts in this field, which are pursued in fora such as the CCD, the Diplomatic Conference on International Law in Armed Conflicts and UNEP. Already at last year's session in this committee, while not commenting on questions of substance, I expressed my government's great interest in this topic. With the report of the CCD including the proposed draft convention before us I would now like to comment in substance on the various articles contained in the draft and to raise some questions of interpretation and application.

The convention in fact does not prescribe any form of disarmament. It does prohibit certain use. But it does not envisage the elimination from the arsenals of States of the technique, or rather devices, necessary to carry out the technique. Neither does it prevent experiments with such techniques. The reasons for this are perhaps to be found in the thin borderline between peaceful and hostile use, consisting only in a pronounced or self-evident intent behind the action. Further, the ban does not include all military or any other hostile use of environmental modification techniques. According to Article I of the draft it would only apply to those which have widespread, long-lasting or severe effects, when used as the means of destruction, damage or injury to another State party.

The expression "military or any other hostile use" used in the same article does not seem entirely clear to my delegation. All military uses are not necessarily hostile - manoeuvres are of course military in their nature but in most cases not hostile. In order to avoid such a contradictory language and to make the scope of the prohibition as wide as possible, one should settle for the term "hostile use".

Furthermore only such uses which have "widespread, long-lasting or severe effects" would be prohibited. Since apparently the fulfillment of one of these criteria is enough to brand the technique as illegal, the scope of this provision seems broader than that of the articles adopted at the Conference on the International Law in Armed Conflicts, where all three criteria must be present. However, neither of these criteria has as yet been defined, perhaps because of the difficulty to arrive at a precise and clear-cut definition. The drafters of this convention have, through the enumeration of examples in Article II, intended to give us an idea of what is prohibited. Even when account is taken of the fast development of technology that list in the view of my

delegation, however, contains examples that seem to approach science fiction. In our view such a list of examples seem to be superfluous as it would have no legal effect. Moreover, such examples could focus attention on methods for environmental modification for hostile purposes which might prove to be insignificant in the future and which might direct attention from serious developments in other fields.

One of the basic principles in international relationships is to refrain not only from the use but also from the threat of use of force. In the context of environmental warfare, is not the threat of use of an environmental modification technique for reasons of coercion more likely to occur than the actual use itself? Thus, it is important that Article I should prohibit not only the use but also the threat of use.

For the sake of clarity let me sum up my comments on what the scope of the prohibition ought to include: apart from the use it should cover the threat of use and not only the intentional use but any use which may be expected to cause widespread, long-lasting or severe effects. It is the hostile use that ought to be prohibited. The present wording "military or any other hostile use" is confusing and contradictory. The examples given on prohibited use are not apposite. As I have said there is no need for such examples, but if it is the general opinion that examples are necessary, examples of a less fanciful character must be chosen.

Turning now to Article III, it would prescribe that the convention would not be applicable to the peaceful use of modification techniques. As I have already emphasized it is of great importance that existing basic legal norms with respect to the peaceful use, are developed into international regulations. The present wording of Article III which states that "the provisions of this convention shall not hinder the use of environmental modification techniques for peaceful purposes" could be misinterpreted in the sense that every application of this technique is free and permissable as long as no hostile purpose is involved. Such an interpretation is, as we know, wrong. I cannot see the need for an Article III since Article I limits the scope to the hostile use. If there is a need to re-emphasize the non-applicability to peaceful uses, the article should at least be rephrased to read: "the provisions of this convention do not apply to etc. ...".

As regards the provisions for ensuring compliance, contained in Article V, the suggested procedure follows in almost identical terms the procedure of the Bacteriological (biological) weapons Convention. Already in the negotiation of this convention in 1971, the Swedish delegation, as well as other delegations, expressed

concern about the prescribed complaint procedure in the Security Council. The same concern was again expressed in my statement last year with respect to the Soviet proposal on this topic. Regrettably I find it necessary to voice this concern once again. It is imperative that in the concrete negotiations to follow another and more acceptable complaint procedure than that foreseen in Article V, paragraph 2 will have to be found.

We assume that obligations of States under this convention are to be entered into on the basis of equality, that is all States parties should accept the same obligations to co-operate in an investigation, should a complaint of violation be lodged. Therefore, we must be convinced that States bound by the convention are treated on an equal basis. We must be reassured that the permanent members of the Security Council in this context will not use their right of veto in a case of complaint. It is my hope, Mr. Chairman, that the future discussions on this matter will clarify the points I have commented on today.

CONFERENCE OF THE COMMITTEE ON DISARMAMENT

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20 February 1976
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LETTER DATED 20 FEBRUARY 1976 FROM THE PERMANENT REPRESENTATIVE OF AUSTRALIA TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL TRANSMITTING THE TEXT OF A STATEMENT ON ENVIRONMENTAL MODIFICATION MADE BY THE AUSTRALIAN REPRESENTATIVE IN THE FIRST COMMITTEE OF THE UNITED NATIONS GENERAL ASSEMBLY ON 24 NOVEMBER 1975

I enclose with this letter the text of a statement on Environmental Modification made by the Australian Representative in the First Committee of the United Nations General Assembly on 24 November 1975.

I should be grateful if you could arrange for this statement to be circulated as an official document of the Conference of the Committee on Disarmament and to be given the appropriate distribution.

(Signed) O.L. Davis
Permanent Representative

GE.76-82032

In the Australian general debate statement in this Committee on 7 November, our delegation indicated that we might wish to express more detailed views concerning the draft convention on the prohibition of military or any other hostile use of environmental modification techniques. It is to this subject that I should like to address myself this morning. We have noted that the two co-authors of the draft convention, the United States and the USSR, both indicated that they would welcome the views of others on this subject during the present session of the General Assembly.

Already a number of delegations have commented, including an interesting intervention by the Swedish delegation on 14 November. Australia has no special role in the field of environmental modification for military purposes. However, my Government has taken an interest in this question in the context of the negotiation of the draft articles concerning protection of the environment that have been included in the protocols currently being negotiated at the Diplomatic Conference on Humanitarian Law in Armed Conflict, in Geneva.

Consequently, we would like to offer a few questions and a few suggestions which we hope that members of the CCD might take into account in their discussion of the draft convention next year.

My Government believes that the discussion in the CCD should take into account the draft articles that have been included in the two protocols which have been negotiated at Geneva. I shall list these very briefly. In protocol I, which deals with conflicts between states, there are two relevant articles.

Article 33.3 states as the basic rule:

"It is forbidden to employ methods or means of warfare which are intended or might be expected to cause widespread, long-term and severe damage to the natural environment."

Article 48 bis states:

"Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. Such care includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisal are prohibited."

This draft article reflects the view that the protection of the environment in time of war has as its purpose the continued survival or health of the civilian population which lives in that environment. This, of course, was the basic rationale behind the inclusion of provisions concerning protection of the environment in a draft instrument on humanitarian law in armed conflict.

In the second protocol, which concerns purely internal conflicts, draft article 28 states the basic rule in similar terms to those of article 33.3 which I just quoted.

The Australian Government recognizes that the draft convention is an arms control measure, whereas the articles in the Geneva protocols are part of the humanitarian law of armed conflict. The points of origin of these two proposed legal instruments are, therefore, not the same and we would expect to see some differences between them. We believe, however, that there is a need to give consideration to the desirability of harmonizing the two approaches as much as may be appropriate, and we would be concerned if discussion of the convention in the CCD did not take into account the corresponding discussion on the articles on environmental protection taking place in the ICRC.

Consideration should be given to providing consistency of language wherever possible. On the other hand, and because the convention and the protocol articles are not intended to cover the same ground, it needs to be re-emphasized that the conclusion of a convention along the lines of the draft convention should not be proposed, presented or perceived as an alternative to the Geneva articles.

I would now like to comment briefly on some of the individual articles in greater detail. We have several queries concerning article 1. The undertaking in article 1 is limited to "destruction, damage or injury to another State party." This language is presumably appropriate for a convention between States. Nevertheless, we wonder whether the article might not indicate more precisely the nature of the damage that is to be prohibited. Does the convention article encompass damage or injury to a State's citizens or to their property, or to their environment? This is not very clear. Again, the reference to "widespread, long-lasting or severe effects" does not make clear whether it refers to severe effects on the natural environment or on the human environment or on both.

A third point of interest we have noted in article 1 is that, in its present form, it applies only to environmental modification techniques "having" widespread effects; whereas the draft Geneva articles would seem to have a broader coverage in that they prohibit techniques "which are intended or which may be expected to cause" such prohibited effects.

On the face of it, therefore, it would seem to the Australian Government that there should be some consideration of whether article 1 is sufficient clear and precise as it now stands.

Article 2 of the draft convention refers to techniques "for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth." The protocol articles, on the other hand, apply generally to damage to the

natural environment and would, therefore, seem to be broader in their scope. They would not only prohibit damage to the environment which was the result of deliberate manipulation of natural processes, they would also prohibit such damage as resulted from severe alteration to the terrain by major military operations. I would note, however, that it was generally agreed and recorded in Geneva that what is described as battlefield damage could not be prohibited.

Secondly, on this article, we have noted with some interest the comment by the Swedish delegation in regard to the list of examples which is given in the text of article 2. We agree that there may be a case for not listing examples which might have the disadvantage of focusing attention on particular methods of environmental modification for military purposes and thereby of diverting attention from possibly quite serious developments in other fields.

At first sight, for example, it is a little difficult to see that article 2 could also cover the large-scale use of herbicides or other chemicals as a means of upsetting the ecological balance of a region. The article as it now stands seems to put the major emphasis on examples of applications of physical and meteorological energies which are present in the environment.

With regard to article 3, we have considered the Swedish suggestion that this article perhaps may not be necessary at all. Our own approach is somewhat different, though it stems from a similar concern. In Australia's view, the peaceful use of environmental modification techniques is already subject to existing rules of international law dealing with the protection of the environment of States, for example, principle 21 of the Stockholm Declaration and also the recent judgment of the International Court of Justice in the nuclear-testing case. In Australia's view, existing international law prohibits the modification of a State's environment without its consent by activities under the jurisdiction or control of another State. Therefore, we believe it should be made clear in the convention that the convention is not the only international law on environmental modification. One way of doing that might be to add a phrase at the end of article 3 along the following lines: "subject to the provisions of existing international law prohibiting the modification of a State's environment without its consent by activities under the jurisdiction or control of another State."

The precise operation of article 4 does not seem very clear. Article 4 states that the prohibition applies to any activity, anywhere, under a State's jurisdiction or control. The State's own territory would obviously be covered by this. Presumably adjacent sea areas or the air-space above them could also be considered to be under the jurisdiction of the State in respect of activities by itself or by its nationals.

Activities carried out in the air-space or territory of a third State could also probably be considered to be under the jurisdiction or control of the State which carried out a prohibited activity. It seems desirable to con ider the redrafting of this article to make it clear that it would apply to activities in one's own territory, in the territory of a third State, and in areas beyond national jurisdiction. Since the convention is only concerned with activities directed against another State, it would seem that the real operation of article 4 is significantly limited.

In regard to article 5, we share the Swedish concern about the need to ensure that the envisaged complaints procedure in the Security Council should not be weakened in any way by the veto right of permanent members of the Council. It is essential that all States parties to the convention should accept the same obligations to co-operate in any investigation of a complaint on a basis of equality.

We would also comment in relation to this article that the Security Council would clearly be lacking in the technical expertise it would need to adjudicate environmental modification complaints. The Council should therefore be empowered to call upon technical advice, as required, from any expert body, either within or outside the United Nations system, when investigating the basis of a complaint.

While it would not be possible or desirable for United Nations technical bodies such as the World Meteorological Organization (WMO), the Food and Agriculture Organization (FAO) or the United Nations Environment Programme (UNEP) to adjudicate disputes, it might be desirable to indicate in the convention that such United Nations bodies would have a potential advisory role.

In regard to article 8, Australia believes that, in view of the intended universal nature of the draft convention, it would seem most appropriate for the United Nations Secretary-General to be given the depositary functions.

In conclusion, I should like to offer the congratulations of my Government to both the United States and the Soviet Union for their rapid negotiation of this draft convention. I share the hope that the CCD will be able to conclude its consideration of the draft convention in the forthcoming year, so that we may have yet another international disarmament instrument on the books and ready for signature at next year's General Assembly.